IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 71 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE D.H.WAGHELA Sd/-
and
Hon'ble MR.JUSTICE D.A.MEHTA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

1 to 5 NO

COMMISSIONER OF INCOME TAX

Versus

KLIN PRODUCTS (M) P LTD

Appearance:

1. INCOME TAX REFERENCE No. 71 of 1991
MR TANVISH U BHATT for Petitioner No. 1
NOTICE SERVED for Respondent No. 1

CORAM : MR.JUSTICE D.H.WAGHELA
and
MR.JUSTICE D.A.MEHTA

Date of decision: 13/08/2003

ORAL JUDGEMENT

(Per : MR.JUSTICE D.A.MEHTA)

1. This is a Reference at the instance of the Commissioner of Income Tax, Rajkot under section 256 (1) of the Income-tax Act, 1961 in relation to the order dated 11.1.1990 of Ahmedabad Bench 'C' of the Income Tax Appellate Tribunal. The question referred for the opinion of this Court is as under:-

"Whether, the Appellate Tribunal is right in law and on facts in remanding the matter relating to grant of deduction under section 80-J to the Income-tax Officer directing him to consider the assessee's claim on the lines suggested by the Tribunal in the assessee's own case for assessment year 1981-82 reported in 23 ITD 4237 ?"

2. Heard Mr.Tanvish U.Bhatt, the learned counsel for the Income-tax Department. It is submitted that the present Reference pertains to assessment year 1983-84 and the Tribunal has followed its own decision for assessment year 1981-82 in relation to grant of deduction under section 80-J of the Act. That for assessment year 1981-82 when the assessee had come up in Reference against the original order as well as the order of the Tribunal in the second round after the earlier order of remand, both the References were registered as I.T.Reference No.51 of 1989 and I.T.Reference No.120 of 1989. A copy of the decision of this Court dated 22.1.2003 in the aforesaid References has been placed before us (since reported in 261 ITR 338). In the said decision, in paragraphs 1.1 and 1.2, Question No.2 pertaining to relief under section 80-J of the Act reads as under:-

"1.1 The Income Tax Appellate Tribunal, Ahmedabad Bench "B" has referred the following two questions, which are the subject matter of Income Tax Reference No.51 of 1989, under section 256 (2) of the Income Tax Act, 1971:

(1) xxx xxx xxx

"(2) Whether, on the facts and in the circumstances of the case, the Income-tax Appellate Tribunal was justified in remanding the matter to the Income-tax Officer to work out relief under Section 80-J of the Income-tax Act, 1961?"

1.2 The Tribunal has also referred the following two questions, which are the subject matter of Income Tax Reference No.120 of 1989, under section 256 (2) of the Income Tax Act, 1961:

"(1) xxx xxx xxx

(2) Whether, on the facts and in the circumstances of the case, the Income-tax Appellate Tribunal was justified in remanding the matter to the Income-tax Officer to work out relief under Section 80J of the Income Tax Act, 1961?"

In para 3 of the earlier decision of this Court, it is stated thus:

"3. When the References were called out for final hearing, the learned counsel appearing for the assessee in both the References stated that the assessee did not press for the question No.2 in both the References, which relates to relief under section 80J of the Act. The question No.2 in both the References, therefore, stands disposed of accordingly as unanswered on the ground that the assessee has not pressed for the same."

3. In light of the fact that the assessee had not pursued this Reference for assessment year 1981-82, on which reliance has been placed by the Revenue for seeking the present Reference, it is apparent that the present Reference becomes academic and infructuous in the circumstances.

4. We, therefore, decline to answer the question referred to us and dispose of the Reference as unanswered.

Sd/-

(D.H.Waghela,J.)

Sd/-

(D.A.Mehta, J.)

(KMG Thilake)